

7/31/08
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PRESERVATION RESTRICTION AGREEMENT
between
THE TOWN OF ACTON
and
ACTON COMMUNITY CENTER, INC.

THIS PRESERVATION RESTRICTION AGREEMENT (this "Restriction") is made as of this 17th day of July, 2008, by and between ACTON COMMUNITY CENTER, INC., d/b/a Theater III, a Massachusetts not for profit corporation with an address at 250 Central Street, West Acton, Massachusetts 01720 ("Grantor") and THE TOWN OF ACTON, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen (the "Town").

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property and the improvements thereon located at 250 Central Street in the Town of Acton, Middlesex County, Massachusetts (hereinafter the "Premises") described on Exhibit A attached hereto and incorporated herein, being the same premises conveyed to Grantor in a deed dated October 28, 1955, from West Acton Women's Club, Inc., to Grantor recorded in the Middlesex South District Registry of Deeds (the "Registry"), Book 8599, Page 245 (the "Deed").

WHEREAS, the Premises is located in the West Acton Local Historic District and includes a building originally constructed in 1868 that was formerly used as the Universalist Church and which is currently owned, used and occupied by Grantor as a community theater building commonly known as "Theater III" (the "Building").

WHEREAS, the Building's preservation values are documented in a series of reports, drawings and photographs (hereinafter, the "Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation

of the Building as of the date of this Preservation Restriction.

WHEREAS, the Baseline Documentation consists of the following:

- A) The legal description of the Premises attached hereto as Exhibit A;
- B) The Deed;
- C) Acton GIS/Assessor's map showing the Premises;
- D) Photographs of the Premises and the Building showing the condition of both the Premises and the Building as of the date hereof; and
- E) Grantor's Project Application Form-2008 dated November 5, 2007 on file with the Town of Acton Planning Board and consisting of twenty-eight (28) pages and which includes Items (C) and (D) above.

All of the foregoing Baseline Documentation is on file with Planning Department of the Town.

WHEREAS, the Town is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town and is authorized to accept and hold preservation restrictions as defined under Massachusetts General Laws, Chapter 184, Section 31.

WHEREAS, the Town has appropriated a grant to Grantor under the Community Preservation Act, G.L. c. 44B, §§ 1-17, for the restoration of historic elements within the Building.

WHEREAS, as a condition to such grant, Grantor is required to grant to the Town this Restriction.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Town this Restriction, which shall apply in perpetuity to the Premises subject to the terms hereof.

1. Purpose. It is the purpose of this Restriction to protect the public investment in the restoration of the historically significant Building by ensuring that the exterior architectural, historic, and cultural features of the Building will be retained and maintained forever substantially in their current condition for preservation purposes and to prevent any use or change to the exterior of the Building that will materially impair or interfere with the Building's preservation values.

2. Grantor's Covenant to Maintain. Grantor agrees at all times to maintain the exterior of the Building in at least the same structural condition and state of repair as that

existing on the date of this Restriction in accordance with applicable local, state and federal laws, rules, bylaws and regulations, including without limitation applicable policies, procedures and guidelines of the Acton Historic District Commission, as they may be amended from time to time (the "HDC Guidelines"), and in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as they may be amended from time to time (the "Secretary's Standards"). If the Secretary's Standards or the HDC Guidelines are revoked, then the most recent version of the Secretary's Standards or the HDC Guidelines, as the case may be, shall apply to this Restriction as if such version had not been revoked unless the revoked HDC Guidelines or Secretary's Standards are replaced by successor guidelines or standards, in which event such successor guidelines or standards shall apply. The Town does not assume any obligation for maintaining, repairing or administering the Premises.

3. Prohibited Activities. Except as provided in Section 8, demolition, removal or razing of the Building or any portion thereof is expressly forbidden.

4. Conditional Rights Requiring Approval of the Town.

(a) Except as otherwise provided in this Section 4, changes to the exterior (including fenestration and trim) of the Building, including without limitation partial removal, construction or other physical or structural change to the exterior, including any change to the footprint, size, massing, ridgeline and windows of the Building, are expressly forbidden on, over or under the Premises without the prior express written approval of the Town, which may be withheld or conditioned in the Town's sole and absolute discretion. Notwithstanding the immediately foregoing sentence, alterations listed as "Minor" in the Restriction Guidelines attached hereto as Exhibit B are considered part of ordinary maintenance and repair and may be made to the Building and the Premises without the Town's approval.

(b) Should Grantor wish to exercise the conditional rights set out or referred to in Section 4(a) above, Grantor shall submit to the Town, for the Town's approval, five (5) copies of a written request that includes a description of the proposed activity (including without limitation plans, specifications and designs where appropriate) with reasonable specificity and a timetable for the proposed activity sufficient to permit the Town to monitor such activity. Within sixty (60) days of the Town's receipt of any such request for approval hereunder, the Town shall certify in writing that (i) it approves the plan or request, or (ii) it disapproves the plan or request as submitted, in which case the Town shall provide Grantor with written suggestion(s) for modification or a written explanation for the Town's disapproval.

5. Standards for Review. The Town shall apply the Secretary's Standards and the HDC Guidelines whenever exercising any authority, right or privilege created by this Restriction. If the Secretary's Standards or the HDC Guidelines are revoked, then the most recent version of the Secretary's Standards or the HDC Guidelines, as the case may be, shall apply to this Restriction as if such version had not been revoked unless the revoked HDC Guidelines or Secretary's Standards are replaced by successor guidelines or standards, in which event such successor guidelines or standards shall apply.

6. Grantor's Rights Not Requiring Further Approval of Town. Subject at all times to the terms and provisions of Sections 3 and 4 of this Restriction, this Restriction does not prohibit, and does not require the Town's approval of, the following rights, uses, and activities of or by Grantor on, over, or under the Premises:

- (a) the right to engage in all those activities and uses that are permitted by all applicable laws, codes and regulations and are not otherwise inconsistent with the terms and provisions of this Restriction;
- (b) the right to maintain and repair the Building strictly in accordance with the Secretary's Standards and the HDC Guidelines; and
- (c) the right to make changes of any kind to the interior of the Building that do not affect the structural integrity of the Building and do not affect the characteristics that contribute to the architectural, archeological, or historical integrity of the exterior of the Building.

7. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire or other casualty, Grantor shall promptly notify the Town in writing (but in no event later than seven (7) days after such casualty), such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Building or to protect public safety shall be undertaken by Grantor without the Town's prior written approval. Within thirty (30) days of the date of damage or destruction, Grantor at Grantor's expense shall submit to the Town a written report prepared by a qualified restoration architect and an engineer acceptable to the Town, which report shall include the following:

- (a) an assessment of the nature and extent of the damage to the exterior and interior of the Building;
- (b) a determination of the feasibility of the repair and restoration of the exterior of the Building (or the damaged or destroyed exterior portions thereof); and
- (c) a detailed description of the repair and restoration work necessary to return the exterior of the Building to the condition existing at the date of this Restriction.

8. Review After Casualty Damage or Destruction. If, after reviewing the report required in Section 7, the Town determines that it is economically feasible for Grantor to repair or restore the Building to the condition that it is in on the date of this Restriction, Grantor shall do so in accordance with the terms of this Restriction. Grantor shall submit to the Town, within thirty (30) days of Grantor's receipt of the Town's determination that the Building should be repaired or restored, for the Town's prior written approval, plans and specifications for the repair or restoration of the Building along with a construction schedule for the Work. The Town shall have sixty (60) days to review such plans, specifications and schedule, and the parties shall proceed under Section 4(b) of this Restriction. If the Town determines, in its sole and absolute discretion, by written notice to Grantor, that it is not economically feasible to repair or reconstruct the Building or that the purpose of this Restriction would not be served by such

repair or restoration, Grantor may alter, demolish, remove or raze the Building or construct new improvements on the Premises all in accordance with all applicable laws and regulations. In such event, Grantor and the Town may agree to extinguish this Restriction in accordance with applicable laws, and upon such extinguishment, the Grantor shall repay the full amount of the grant made by the Town to Grantor under the Community Preservation Act, together with interest at the rate of seven percent (7%) per annum accruing from the date of this Restriction, subject to a credit for the depreciated value of the improvements that were the subject of such grant assuming a useful life of forty (40) years from the date of this Restriction. Grantor will use its best efforts to maximize the insurance proceeds available for repair or rebuilding of the Building. Notwithstanding anything in this Section 8 to the contrary, the Town shall not consider whether or not Grantor or its mortgage lender is holding sufficient insurance proceeds to repair or restore the Building as a factor in determining whether it is economically feasible to do so.

9. Insurance. Grantor shall keep the Building insured by an insurance company rated "A" or better by A.M. Best for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to fully replace the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Town upon the execution and recording hereof, certificates of such insurance coverage naming the Town as loss payee and additional insured and requiring not less than thirty (30) days prior written notice to the Town before expiration or termination of any such policy. Grantor shall provide to the Town replacement certificates of insurance satisfying the terms and conditions of this Section 9 at least fifteen (15) days prior to the expiration or termination of any such policy or as otherwise required by the Town. Notwithstanding the foregoing, whenever the Premises is encumbered with a mortgage nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee to such insurance proceeds, less any amounts owed to the Town pursuant to Section 8 above in the case of a casualty in which the Building is not repair or restored, which shall be senior to any such mortgage.

10. Condemnation. If all or any part of the Premises is taken under the power of eminent domain by a public authority or is otherwise acquired by such authority through a purchase in lieu of a taking, Grantor may commence appropriate proceedings at the time of such taking to recover the full value of Grantor's interest in the Premises, subject to such taking and all incidental and direct damages resulting therefrom. The Town may, but shall not be required to, join in any proceedings relating to a taking of all or any part of the Premises, and the Town shall be entitled to receive as part of any takings award or damages the full amount of the grant made by the Town to Grantor under the Community Preservation Act together with interest at the rate of seven percent (7%) per annum accruing from the date of this Restriction, subject to a credit for the depreciated value of the improvements that were the subject of such grant assuming a useful life of forty (40) years from the date of this Restriction.

11. Written Notice. Any notice which either Grantor or the Town may desire to give or be required to give to the other party shall be in writing and shall be delivered by overnight

courier postage prepaid, registered or certified mail with return receipt requested, or hand delivery as follows:

To Grantor:

Acton Community Center, Inc.
250 Central Street
West Acton, MA 01720

To Town:

Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

with a copy to:

Donald Oliver
19 Captain Browns Lane
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

Each party may change its address set forth herein by written notice to the other party given pursuant to this section.

12. Inspection. The Town shall be permitted at reasonable times and upon reasonable notice to Grantor to enter on and inspect the Premises and the Building to determine whether Grantor is in compliance with the terms of this Restriction.

13. Town's Remedies. The Town may, following prior written notice to Grantor, institute suits to enjoin any violation of the terms of this Restriction by ex parte, temporary, preliminary or permanent injunction, including without limitation prohibitory and/or mandatory injunctive relief, and to require the restoration of the exterior of the Building to the condition and appearance required under this Restriction. The Town shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event any civil action is commenced and Grantor is found to have violated any of Grantor's obligations or is otherwise liable under this Restriction, Grantor shall reimburse the Town for any costs or expenses incurred in connection with the Town's enforcement of the term of this Restriction, including without limitation all reasonable court costs, and attorney, architectural, engineering and expert witness fees.

14. Runs with the Land.

(a) This Restriction and all of the covenants, agreements and restrictions contained herein shall be deemed to be a preservation restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32 and 33. Grantor shall fully cooperate with the Town in its efforts to obtain any government approvals necessary for the perpetual enforcement of this Restriction, including but not limited to the approval of the Commissioner of the Massachusetts Historic Commission ("MHC") as provided under G.L. c. 184, § 32. In the event that this Restriction in its current form is not acceptable to MHC for purposes of said approval, Grantor shall cooperate with the Town in making any and all modifications that are

necessary to obtain said approval. This Restriction shall also be deemed an "other restriction held by any governmental body" as that term is used under G.L. c. 184, § 26 notwithstanding MHC approval or disapproval of this Restriction. The term of this Restriction shall be perpetual, subject to the provisions of Section 8. To the extent required by applicable law, the Town is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Restriction.

(b) Grantor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Restriction and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Premises for the term of this Restriction, and are binding upon Grantor's successors in title, (ii) are not merely personal covenants of Grantor, and (iii) shall bind Grantor, its successors and assigns and inure to the benefit of the Town and its successors and assigns for the term of the Restriction.

15. Title; Authority. Grantor hereby represents, covenants and warrants as follows:

(a) Grantor (i) is a non-profit corporation duly organized under the laws of the Commonwealth of Massachusetts and is qualified to transact business under the laws of this Commonwealth, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Restriction.

(b) The execution and performance of this Restriction by Grantor (i) will not violate any provision of law, rule or regulation or any order of any court or other agency or governmental body, and (ii) will not violate any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which Grantor is a party or by which it or the Premises is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) Grantor will, at the time of execution and delivery of this Restriction, have good and marketable title to the Premises free and clear of any lien or encumbrance except those matters set forth on Exhibit C attached hereto. Grantor represents and warrants that it has obtained the consent of all existing mortgagees of the Premises to the execution and recording of this Restriction and to the terms and conditions hereof and the subordination of all existing mortgages to this Restriction.

16. Assignment. The Town may, at its discretion without prior notice to Grantor, convey, assign or transfer this Restriction to a unit of federal, state or local government or to a similar local, state or national organization that is a "qualified organization" under Section 170 (h) of the Internal Revenue Code, as amended, whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the purpose for which the Restriction was granted will continue to be carried out

17. Recording. Grantor shall do and perform at its own cost all acts necessary for the prompt recording of this Restriction in the Registry, and shall transmit evidence of such

recording or filing, including the date and instrument number and book and page or registration number of this Restriction, to the Town.

18. Amendment. This Restriction may only be amended by mutual agreement of the parties, in a written instrument recorded in the Registry.

19. Entire Agreement. This Restriction reflects the entire agreement between the parties. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this Restriction.

20. Governing Law. This Restriction shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

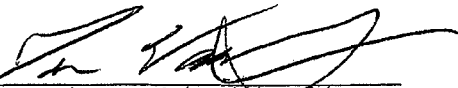
21. Invalidity of Particular Provisions. If any term or provision of this Restriction, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Restriction, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Restriction shall be valid and be enforceable to the fullest extent permitted by law.

22. Counterparts. This Restriction may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

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EXECUTED under seal as of the date first written above.

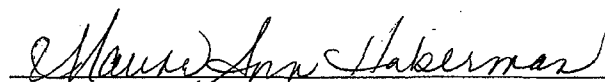
GRANTOR: ACTON COMMUNITY CENTER, INC.

By: 
Name: Tom Wachtell
Title: President

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex

On this 17 day of July, 2008, before me, the undersigned notary public, personally appeared Tom Wachtell, proved to me through satisfactory evidence of identification, which was MA Drivers License, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose, as President for Acton Community Center, Inc., a corporation.


Notary Public:

My Commission Expires:



MAURA ANN HABERMAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 12, 2012

TOWN:

TOWN OF ACTON
BOARD OF SELECTMEN

Terra Friedrichs

Lauren S. Rosenzweig

Andrew D. Magee

Paulina Knibbe

Peter Berry

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

On this ____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____,
Members of the Selectmen for the Town of Acton, proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:

EXHIBIT A

Legal Description of Premises

Beginning at the southeasterly corner of the granted premises at the junction of the westerly line of Central Street and the northerly line of Church Street and running NORTH 69° 15' WEST by said line of Church Street, one hundred sixty-one and 5/10 (161.5) feet; thence turning and running NORTH 20° 21' EAST, eighty-three and 75/100 (83.75) feet; thence turning and running SOUTH 68° 11' EAST, one hundred sixty and 5/10 (160.5) feet to the westerly line of Central Street; thence turning and running SOUTH 19° 39' WEST by said line, eighty-one and 25/100 (81.25) feet to the point of beginning.

Being a portion of the premises conveyed to the West Acton Women's Club by deed of George V. Mead, Arthur F. Blanchard and George S. Wright, dated October 27, 1925 and recorded with Middlesex South District Deeds, Book 4908, Page 242.

EXHIBIT B

Restriction Guidelines

The purpose of the Restriction Guidelines is to clarify Section 4 of the terms of the Restriction, which addresses with exterior alterations to 250 Central Street, Acton, Massachusetts. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require the consent of the Town.

In an effort to explain what constitutes a minor alteration, the following list has been developed. This is not a comprehensive list, and it is provided for illustrative purposes only. It is only a sampling of some of the more common alterations which may be contemplated by building owners. In the event of a conflict between these Guidelines and the Restriction, the Restriction shall control.

PAINT

Minor - Hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, etc.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

EXHIBIT C

Permitted Encumbrances

Grantor represents and warrants that there are no liens or encumbrances caused or incurred by the Grantor encumbering or otherwise affecting the Premises as of the date of this Restriction.